

1. Plaintiffs filed their Motion for Leave to File Second Amended Complaint on June 11, 2018. (Dk. #43). Defendants opposed the motion and it was filed as an opposed motion. However, on Friday, June 22, 2018, before the deadline for responding had passed, a text order was entered granting the motion. The order indicated that the motion was filed unopposed. For

the reasons contained herein, Defendants do oppose the motion, as indicated by Plaintiffs, and would ask the Court to reconsider the order of June 22, 2018.

2. A review of the procedural history of this case highlights why Defendants opposed Plaintiffs' Motion for Leave. Suit was originally filed in this case in August 2017. (Dk. #1). The Defendants are members of the City Council for the City of San Antonio, who were sued in their official capacities only. The parties agreed to a proposed scheduling order which was entered by the Court on January 31, 2018. (Dk. #25). Pursuant to that order, the deadline for adding additional parties and amending pleadings was April 9, 2018. Discovery closed on June 4, 2018 and dispositive motions must be filed by July 9, 2018.

3. Shortly before the deadline for amending pleadings, Plaintiffs forwarded a proposed Second Amended Petition to Defendants and asked if Defendants opposed a motion for leave to file said petition. The sole change in the proposed amendment was to include pleadings alleging Plaintiffs had standing to sue as taxpayers. (Dk. #29-1) Although Defendants deny such standing, Defendants did not believe they had a reason for opposing the request to file the amended complaint. As such, Plaintiffs filed their Motion to Amend as unopposed. (Dk. #29).

4. On or about May 21, 2018, the Court issued a text order deny Plaintiffs' Motion for Leave. In the order, the Court stated:

Pursuant to the local rules, an executed copy of an amended complaint must accompany a motion for leave to file an amended complaint. The "incomplete draft" amended complaint submitted by Plaintiffs along with their motion is insufficient. See Local Rule CV-7(b). Also, although Plaintiffs' clarify in their "incomplete draft" amended complaint that they are municipal taxpayers, they fail to allege that tax revenues from the relevant entity were expended on the disputed practice. See *Ehm v. San Antonio City Council*, 269 Fed. App'x 375, 377 (5th Cir. 2008). To the extent Plaintiffs wish to file a complete, executed amended complaint that sets forth facts sufficient to establish their standing to pursue this litigation, it will be submitted out of time because the deadline to file amended

pleadings has lapsed in this case. Further, any such request to file an amended complaint should comply with the governing local and federal rules.

The clear language of the order indicated that the motion was denied for procedural reasons and that Plaintiffs' could cure these deficiencies and refile despite the fact that the deadline to amend had passed.

5. The proposed amended complaint submitted by Plaintiffs on June 11, 2018 far exceeds what was proposed in the May 21 order. Plaintiffs' Second Amended Complaint seeks, for the first time, to sue each member of the City Council in their individual capacities and adds the City of San Antonio as a new party defendant.¹ (Dk. #44) The proposed petition submitted in April was approximately 27 pages; the petition submitted June 11 is 42 pages long. The proposed April complaint consisted of two causes of action – abridgement of free speech and conversion, both of which were previously plead. The June amendment adds for the first time claims of violation of the Texas Antiquities Code and an allegation that the Defendants have “rendered the charitable gifts’ purpose impossible.” In essence, the Plaintiffs have been allowed to file a completely new lawsuit well after the deadline for designating additional parties, the deadline for amending pleadings and the discovery deadline. As such, Plaintiffs’ motion is not timely, even under the Court’s May 21 order and the Motion for Leave should have been denied.

6. Defendants now move this Court to reconsider the Order dated June 22, 2018 in that Defendants do oppose the Motion for Leave, as indicated by Plaintiffs in the Motion. (Dk. # 43). Defendants move this Court to take into consideration the argument made herein and to deny Plaintiffs’ Motion for Leave as it was not timely made.

¹ Defendants concede that suit against them in their official capacity is the same as suit against the City; however, the City was not actually named previously. Suit against these officials in their individual capacities concerns significantly issues.

7. Undersigned counsel hereby certifies that she attempted to confer with opposing counsel regarding the filing of this motion, but, due to the short time, did not hear back from them. Undersigned counsel presumes Plaintiffs' oppose this motion but will notify the Court if that is not the case.

WHEREFORE, PREMISES CONSIDERED, DEFENDANTS RON NIRENBERG, in his Official Capacity as Mayor of the City of San Antonio, and ROBERT TREVINO, WILLIAM SHAW, REBECCA VIAGRAN, REY SALDANA, SHIRLEY GONZALES, GREG BROCKHOUSE, ANA SANDOVAL, MANNY PALAEZ, and JOHN COURAGE, and CLAYTON PERRY, in Their Official Capacities as Members of the San Antonio City Council, pray this Court reconsider the Order of June 22, 2018, deny Plaintiffs' Motion for Leave to File an Amended Complaint (Dk. #), strike Plaintiffs' Second Amended Complaint (Dk. #**) and for such +other and further relief, both in law and in equity, to which these Defendants may be entitled.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of Court using the CM/ECF system that will send notification of such filing to the following on June 25, 2018:

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